IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 122 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

AASBAI IBRAHIM NODE

Appearance:

MS ROOPAL R PATEL for Petitioner

MR SURESH M SHAH for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/07/2000

ORAL JUDGEMENT

Admit.

1. This appeal is directed against impugned judgment and award dated 26/11/1999 rendered by the learned Motor

Accident Claims Tribunal (for short 'MACT') (Auxiliary 1) District Kutch at Bhuj in M.A.C.P. 312/1993. The appellant herein is the original respondent no. 2 and respondent no. 1 herein is the original claimant. The parties will be referred to in this judgment by their original nomenclature.

2. It is the petitioner's case that she was standing at the Mundra Octroi Chockey Bus Stop in Bhuj city on 26/11/1992. At that point of time the S.T. Bus belonging to the 2nd respondent driven by the 1st respondent on Bhuj-Mandavi route reached the bus stop. The petitioner climbed the steps at the entrance of the bus. While she was on the steps, the bus was started by the 1st respondent even without the conductor having given any signal by ringing the bell for starting the bus. This resulted in the petitioner being thrown out of the bus and run over by the rear wheel resulting into serious injury to her right leg. It was the petitioner's case that she suffered such injury as a result of rash and negligent driving on the part of the 1st respondent. She was required to be medically treated and yet she suffered permanent partial disablement to the extent of 20%. She, therefore, claimed compensation in the sum of Rs.1,76,000/-, but limited her claim to Rs.1,00,000/-.

3. The respondents denied the case of the petitioner in their written statement exh. 11 inter-alia saying that the bus started from the bus stop in question upon the signal given by the Conductor and only when the passengers started shouting, the bus had to be stopped. The bus was over crowded with the passengers. Even then when the bus so stopped the petitioner climbed up the bus and while once-again stepping down the entrance she had a fall which resulted into the accident in question. Upon assessment of the evidence that was adduced before the learned Tribunal and after hearing the parties, the learned Tribunal came to the conclusion that the accident occurred as a result of gross and negligent driving on the part of the 1st respondent and assessed the claim of compensation at Rs.63,100/-.

4. When this appeal came up for hearing, notice was issued. At the stage of hearing for admission learned advocates appearing for the rival parties jointly submitted that this appeal might be finally heard and decided. They have accordingly been heard for the final disposal of this appeal.

5. Learned advocate appearing for the 2nd respondent (appellant herein) firstly went through the judgment of

the Ld. Tribunal as also the oral evidence adduced before the Ld. Tribunal. She made some efforts for dislodging the finding on the question of negligence, but ultimately she had to concentrate on the quantum of compensation awarded by the Ld. Tribunal. This was so because the 2nd respondent limited its claim in this appeal to the extent of Rs.50,000/-. Thus, the challenge to the award of the Ld. Tribunal is in respect of the claim to the extent of Rs.50,000/- meaning thereby the 2nd respondent has in substance to agitate quantum of compensation awarded by the Ld. Tribunal.

6. It has been submitted by the Ld. Advocate appearing for the 2nd respondent (appellant herein) that the Ld. Tribunal could not have awarded compensation for a sum of more than Rs.32,073/- which amount has been deposited by the 2nd respondent before the Ld. Tribunal. According to her, the Ld. Tribunal has committed error in assuming monthly income of the claimant at Rs.1200/- and prospective income at Rs.1800/- per month. According to her submission, the claimant did not produce any evidence with regard to her case that she was attending to manual work. As a matter of fact, the petitioner has come out with a case that she was attending to labour work and earning around Rs.1200/- per month. It is true that the applicant has not produced any evidence, but it would be obvious that she would earn some daily wage for the work she would attend to. The presumption drawn by the Ld. Tribunal that ordinarily she would earn around Rs.40/per day cannot be faulted. That is how the Ld. Tribunal has assessed the monthly income of the claimant petitioner at Rs.1200/-. However, there is some drawback in this finding. It is not the petitioner's case that she has been regular employee drawing monthly salary. It is a necessary consequence of a person working on daily wage that he or she might not get work for some day or days in a month. Therefore, instead of Rs.1200/- per month it would be reasonable to assess claimant's monthly income at Rs.1000/-. Considering the future prospective income and applying the principle laid down in the case of Sarla Dixit v. Balwant Yadav reported in AIR 1996 S.C. 1274, the monthly income will have to be worked out at Rs.1500/- per month instead of Rs.1800/- per month worked out by the Ld. Tribunal.

7. Then there is a submission with regard to multiplier to be adopted. Now so far as the matter with regard to multiplier is concerned, it is necessary to make reference of the decision of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation v. Trilok Chandra reported in 1996 (2)

G.L.H. p. 11. Following observations might be experted from the head note :-

"What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Devies' case."

"It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependancy assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate : X, male aged about 35 years, dies in an accident. He leaves behind his widodw and 3 minor children. His monthly income was Rs.3500/-. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus, X and his wife 2 + 2 = 4 units and each minor 1 unit, i.e. 3 units inall, totaling 7 units. Thus, the share per unit works out to Rs.3500/- / 7 = Rs.500/per month. It can thus be assumed that Rs.1000/- was spent on X. Since he was a working member, some provision for his transport and out of pocket expense has to be estimated. In the present case we estimate the out of pocket expense at Rs.250/-. Thus the amount spent on the deceased X works out to Rs.1250/- per month leaving a balance of Rs.3500/- - 1250 = Rs.2250/- per month. This amount can be taken as a monthly

loss X's dependants. The annual dependancy comes to Rs.2250 x 12 = Rs.27,000/-. This annual dependancy has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs.27000 x 15 = Rs.4,05,000/-. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs.3000/- but now having regard to the fall in the value of Rupee, it can be raised to a figure of not more than Rs.10,000/-. Thus, the total comes to Rs.4,05,000/- + 10,000/ = 4,15,000/-."

8. Ms. Rupal Patel, learned advocate for the 2nd respondent (appellant herein) submitted that in the present case the petitioner has not established her age. In this connection reference may be made to exh. 27 discharge card, exh. 28 medico-legal certificate, exh. 33 certificate of Orthopaedic Surgeon, Government Hospital at Bhuj, exh. 49 disability certificate and exh. 38 the evidence of the medical witness. Besides, petitioner's own evidence coupled with her sister's evidence exh. 34 would go to show without any controversy the fact that petitioner was aged around 40 years on the date of accident. Hence, there is no reason why multiplier of 15 years be not applied. In that view of the matter, the Ld. Tribunal has applied correct multiplier for working out just and proper compensation on that score.

9. Then there is a submission with regard to pain, shock and suffering. The Ld. Tribunal has awarded Rs.15,000/- on this count to the petitioner. It would appear from the nature of the injuries sustained by the petitioner that the award of Rs.15,000/- appears to be excessive on this count. Ld. Advocate for the claimant fairly conceded that at best reduction to the extent of Rs.5,000/- might be made.

10. No other point has been urged in this appeal.

11. In the result, amount of the compensation will be reduced by Rs.5,000/- on the head of pain, shock and suffering and Rs.5,400/- on the head of loss of future income on account of permanent partial disability. Thus, a total sum of Rs.10,400/- shall have to be deducted from the compensation awarded by the Ld. Tribunal.

Accordingly, the claimant (respondent no. 1 herein) would be entitled to compensation in the sum of Rs.52,700/- instead of Rs.63,100/- awarded by the Ld. Tribunal. Rest of the award shall have to be maintained. The appellant (respondent no. 2 in the claim petition) will deposit the balance amount before the Ld. Tribunal within six weeks from the date of receipt of copy of the judgment. This appeal will stand partly allowed accordingly with no order as to cost so far as this appeal is concerned.

* * *

PVR.